MONTANA LEGISLATIVE HISTORY

Chapter 246 1963

Bill H 262 S _____ Original bill & history ____C

H. Committee on Townships and Counties			S. Committee on Local Government		
Hearing Date(s)	Feb 06	✓ C	Hearing Date(s)	Feb 20	✓ C
	_____	____C		Feb 27	✓ C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Feb 06	✓ C		Feb 27	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

February 6, 1963

The Townships and Counties Committee met at 12:40 with a quorum present and Chairman Adams presiding.

Rep. Asbjornson stated that he had voted on the prevailing side on H.B. 380 and he would move that H.B. 380 be reconsidered, seconded by Rep. Wright and the motion carried. Rep. Wright moved that H.B. 380 do not pass, seconded by Rep. Asbjornson and the motion carried.

H.B. 222 was discussed with various proponents present to explain the bill. Rep. Mark Etchart explained that the bill would allow county commissioners to purchase up to $5,000 items without calling for a bid. Mr. Maurice Arnold, president of the Montana County Commissioner Association and Mr. Morley Cooper, Montana County Commissioner Association, spoke in support of the bill. They indicated that the commissioners were getting around the present limitation by just purchasing part of something on one purchase, and it would perhaps take two or three purchases to buy one thing and it involved a lot of book work that would be eliminated if H.B. 222 were enacted. He indicated that $2,000 purchased very little of anything at the present day and they very seldom purchased anything without getting verbal bids. The legal calling for bids took too much time and he hoped the committee would give the bill a do pass. Mr. Arnold stated that it was possible quite often to make a considerable saving on purchasing culverts, etc., in a large amount and in a limited time and calling for bids took too long to take advantage of the special sales, etc. The visitors were then excused.

After considerable discussion by the committee members, Rep. Hanks moved that it be put in a sub-committee for further study, seconded by Rep. O'Hair and the motion carried. Rep. Hanks, Twedt, and Tooke were appointed on the sub-committee to report back on the next meeting.

Rep. Lucas and others appeared in support of H.B. 262 which would set up the legal permissive legislation for city-county planning boards. Rep. Lucas gave the history of the other city-county planning board legislation and pointed out that this bill would make proper corrections to make it constitutional. Those representing the various organizations in support of the bill were: Thomas Joyce, president of the city-county planning boards; Everett Darlinton, assistant director state planning board; Mr. Harold Frislie, assistant city manager of Bozeman; Mr. W. H. Kuhr, president of Great Falls City planning board; Mrs. John Nelson Hall, alderman and member of city planning board of Great Falls; Robert E. Matson, geologist, Montana state planning board; Mr. H.D. Korslund, president Bozeman city-county planning board; Mr. Charles Ferguson, county commissioner from Cascade county; Mr. Carroll Henderson, member city-county planning board; Mr. L. Klinger, Montana Municipal League; Mr. W. J. Bentoker, Billings; and Mr. Tom Collins, head of the State Planning Board. Several of them spoke of the money already spent by the various organizations in this work and spoke of the need of the legislatio so that the work could be completed. Farm buildings were to be exempt from the zoning. The visitors were then excused.

Rep. Hanks moved that H.B. 262 do pass, seconded by Rep. Tooke and the motion carried. The meeting was adjourned at 2:00 P.M.

hmw

Chairman
Ed Adams, Jr.

[illegible]
2620-10th Avenue South
Great Falls, Montana
February 6, 1963

Mr. Ed H. Adams Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

The entire membership of the Mobile Home Park Association of Cascade County violently oppose the passage of House Bill 262 at this time. After careful consideration and study we find that this bill jeopardizes the rights of every taxpayer in the county.

The magnitude and scope of this bill is of vital interest to the taxpayers of this county. As of this date, information on this bill has been very very well concealed. The fact that so little is publicly known about House Bill 262 would indicate that if the Township and Counties Committee should advocate passage of this bill it should include a referendum ballot requiring a majority of real property vote. As a group, we know that this bill does not represent a county majority thinking on county zoning.

We know you will give this your very careful consideration.

Yours sincerely,

MOBILE PARK OPERATORS ASSOCIATION

Gordon D. Nisbet

Gordon D. Nisbet
President

931 First Ave. North West
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

I wish to state opposition at this time to House Bill 262. I feel this bill is not necessary at this time. I also feel many changes should be made which grant such a great amount of power to so few people.

I feel that the zoning problem can best be resolved going before the people that must live with it. I would like to see the zoning come before the people in an election on a county level by referendum.

Yours sincerely,

Louis A. Obstarczyk

Louis A. Obstarczyk

1640-6th Avenue North West
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

We oppose House Bill 262 as written. We feel far too much power is granted to the Board of County Commissioners in this matter.

We feel too that we should use our present means and available staff to accomplish orderly growth in the county.

Past attempts to zone in the county have not proved satisfactory. This has been primarily because the individual's right to property in various cases was abused.

We hope sincerely that you will give this bill your fullest consideration before accepting it as is.

Yours sincerely,

Mr. & Mrs. Leo La Porte

Leo LaPorte

Mrs Leo La Porte

106-6th St. N. W.
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

We oppose House Bill 262. We feel the people concerned with this bill have not had an opportunity to know what the bill contains. We feel if something is good, the people to be governed by it should have some time to know how good the bill is for them. After reading this bill and deliberating on it, we feel strongly that many changes are in order to add security to the property owner and tarpayer and less to the governing body.

We would like to see the tarpayer get a break and the counties use the facilities and man-power to the fullest extent. This can be done by the powers already vested in our county officials and staffs working under them. Let's not duplicate duties, it's expensive.

Yours sincerely,

Mr. and Mrs. Kenneth N. Hemstad

Mr. & Mrs. Kenneth N. Hemstad

1100-11th St. South
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

I feel HB 262 will place unnecessary county expenses directly upon the taxpayer. There has got to be a better solution than House Bill 262 to the rural zoning program.

In past attempts at rural zoning in Cascade County we feel that the power of the commissioners should be curbed not expanded.

Yours sincerely,

R. B. Adams

R. B. Adams

5910-2nd Avenue North
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

I protest House Bill 262 because I feel this bill will infringe on my rights as a resident of the county of Cascade in the outlying district of Great Falls, Montana.

I feel this bill is taking on a greater amount of power than is required to make adequate county planning.

Yours sincerely,

Donald L. Kelly

Donald L. Kelly

9-10th St. N. W.
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams, Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

I am opposed to House Bill No. 262. I feel there is too great an amount of power placed in the handsof too few. This bill if enacted will to harmful to our liberty under the constitution. I feel many changes would make it more acceptable.

Yours sincerely,

Chauncey Cassidy

Chauncey Cassidy

4200 Second Avenue North
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

As residents being directly affected by this House Bill 262, we are opposed to this bill in it's present state. We feel it should be placed on a ballot as a referendum so the people who will be governed by it will have a right to accept or reject it.

We feel this bill takes a great deal of freedom from the individual and will stand in the way of private enterprise.

Yours sincerely,

John Conquergood
Ruby Conquergood

John Conquergood
Ruby Conquergood

1405-7th St. South
Great Falls, Montana
February 5, 1963

Mr. Ed M. Adams Jr.,Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

I desire to kill House Bill 262. There are sufficient laws now to take care of the needs of this bill without making new ones and adding an expense to we tarpayers.

Yours sincerely,

W. G. Baehler

W. G. Baehler

Box 1238
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams, Jr. Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear. Mr. Adams,

I am writing with a request that you kill House Bill 262. I feel this bill is needless and duplication of many of our present laws.

Yours sincerely,

Tom Heisler

Tom Heisler

515-27th St. South
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

I request that you kill house bill No. 262. I feel there are enough laws on the books now to take care of these matters without making new laws.

Yours sincerely,

Henry S. Karki

Henry S. Karki

1313 High Street
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

We are opposed to House Bill 262. We feel this bill infringes on the rights of the individual. This bill is not necessary. There is adequate means to take care of the necessary planning if the county will put it to use.

We also feel the people of Cascade County should have a right as well as the people of other counties to choose planning if they wish it and to know what will be demanded of them under it before it becomes a law.

Yours sincerely,

Joel Salmenson
Olga Salmenson

Joel Salmenson
Olga Salmenson

900-10th Ave. South
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

I am opposed to House Bill 262. I feel this bill is not necessary at this time. If the committee feels this bill has merit, they should stipulate that this bill be placed on the ballot as a referendum giving the people a real voice in the acceptance or rejection of this bill.

I feel this bill infringes on our personal liberties and rights granted under the constitution. This bill needs considerable more time to study and make proper changes.

Yours sincerely,

Delano F. Voegele

Delano F. Voegele

304 Riverview Drive West
Great Falls, Montana
February 6, 1963

Mr. Ed M Adams Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Sir,

I am opposed to House Bill 262. I feel duties are being duplicated which would be an additional burden to the tax payer. I also feel the people concerned should be given a real opportunity to vote on this matter since it concerns them so directly.

Yours sincerely,

Mr. and Mrs. Kenneth Hindman

Mr. & Mrs. Kenneth K. Hindman

Mr. and Mrs. William C. Daniels

Mr. & Mrs. William C. Daniels

1108-First Avenue North West
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

I am opposed to House Bill 262. I feel this type of planning is not needed in our county at this time. I feel the money being spent in this manner can be used to a far better interest than this sort of planning. We need more people and industry in Montana, not planning to this extent to discourage it.

Yours sincerely,

Helen L. Ellingston

Helen L. Ellingston

Trailer Terrace
Route #1 South
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams, Jr., Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

I am opposed to House Bill 262 because I feel it is in violation of rights of the property owner that has been granted to him under the constitution. I feel it would have a tendency to discourage private initiative.

Yours sincerely,

Clarence Hagen

Route #1 South
Great Falls, Montana
February 6, 1963

Mr. Ed M. Adams, Jr.Chairman
Townships and Counties
State House of Representatives
Helena, Montana

Dear Mr. Adams,

We are opposed to House Bill 262 because we feel this bill would be a duplication of many duties of officers and departments already in existence. This is an added burden on the taxpayer who is carrying already too heavy a load. We feel too that there is too much power given with this bill. We believe that we should make use of what we now have to do the necessary planning for our county.

Yours sincerely,
Jessie S. Guay
Albert Guay
Jessie S. Guay
Albert Guay

MINUTES
COMMITTEE ON LOCAL GOVERNMENT

February 20, 1963

A meeting of the Committee on Local Government was called to order on February 20, 1963 in the Governor's Conference room by Senator Goodwin, Chairman.

There were approximately 35 guests present for the hearing on House bills 262 and 302. House Bill 262 is a bill to enable the Boards of County Commissioners to designate zoning districts and House Bill No. 302 would clarify advisory functions and jurisdiction of city planning boards and city-county planning boards.

Representative Lucas outlined the important points of these bills and explained some of the changes that these bills would make to the present system of planning boards.

Mr. Tom Joyce, the attorney representing the state planning boards, explained the problems faced by these planning boards as illustrated by the "High Ball" case. He stated the House Bill No. 302 deleted all references that refer to the planning boards as being a third branch of government. He further explained that this bill provides that if 40% of the owners of taxable property protest the zoning in their area, that the board shall not adopt the resolution and no further zoning resolutions shall be proposed for the district for a period of one year.

Mr. Everett Darlington, Assistant Director of the State Planning Board, was present as a proponent of these bills. He pointed out that the various boards throughout the state have already invested about $100,000.00 in the operation of their planning boards.

Mr. Bruce Sheldon of Great Falls, read a statement by the Chamber of Commerce group in his town actively endorsing the passage of these bills.

Mr. Harold Carsmer of Bozeman stated that he was the city-county planning board member and wished the committee to know that his county had spent over $20,000 to date. He also brought to the attention of the committee that there were three county commissioners present with him. Mr. Ralph Acre introduced himself as one of the three.

Other proponents of these bills present were: W. J. Binnington of the Billings Chamber of Commerce; Joe Campeau, Chairman of the city planning board of Helena; Clarence Rough, member of the city-county planning board of Yellowstone County; W. J. Leary, city manager of Helena and member of the Montana Municipal league; W. C. Coors, President of the Great Falls city planning

board; Fred Harrington, member of the Great Falls city planning board; Chan Fergason, Vice Chairman of the Great Falls planning board.

Mr. Robert Emmens, Attorney from Great Falls, led the discussion for the opponents. He stated that in Section 5, subsection 6 of House Bill No. 262, it should read that if owners of sixty (60) percent of the taxable valuation of the real property should sign a petition, then a tax district could be zoned. He doesn't feel that the people should have to protest action, but rather they should desire it. He further stated that House Bill No. 302 gives the people no voice in zoning. Mr. Emmens then called attention to the validating act in bill 302.

Other opponents of the bills present were: Mr. Earl Hasbrow, Great Falls; Mr. John Starzic, City Councilman and former member of the planning board; Mrs. John Vantegen, Great Falls; Mr. Vern Hall, land owner from Great Falls;

Mr. Joyce and Mr. Emmens were then given time for rebuttal by Chairman Goodwin and then the Chairman opened the bills to questions by the committee.

Meeting adjorned.

APPROVED:

Senator Goodwin, Chairman

MINUTES
COMMITTEE ON LOCAL GOVERNMENT

February 27, 1963

A meeting of the committee on Local Government was called to order in room 402 on February 27, 1963 by Senator Goodwin, Chairman. Roll call was taken and a quorum was present.

Senator Goodwin explained the meeting of February 26th to the members which were unable to attend.

Senator McKay moved to AMEND House Bill No. 302 as per the attached sheet. Senator McKenna seconded the motion and it was carried.

Senator McKay moved to amend House Bill No. 262 in Section 5 (6) of House Bill No. 262 by deleting in lines 29 and 30, page 4 of the original bill, being line 37½ page 5 of the printed bill, the following words and figures: "owners of forty (40) percent of the taxable valuation of the real property" and inserting in lieu thereof the words and figures: "thirty-five (35) percent of the freeholders". The motion was seconded by Senator Anderson and carried.

Senator McKay further moved that House Bill No. 302 BE CONCURRED IN AS AMENDED. The motion was seconded by Senator McKenna and carried.

Senator McKay then moved that House Bill No. 262 BE CONCURRED IN AS AMENDED. Senator McKenna seconded the motion and it was carried.

It was moved by Senator Hauk and Seconded by Senator McKay that House Bill No. 49 BE NOT CONCURRED IN. Motion carried.

It was moved by Senator Edwards and seconded by Senator Brenner that House Bill No. 275 BE CONCURRED IN . Motion carried.

The committee on Local Government then adjorned, sine die.

APPROVED:

Goodwin

Senator Goodwin

as of the first day of January; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid. Credits must be assessed as provided in section 84-101, subdivision 6.

Duty to assess motor vehicles.

(2) The assessor must ascertain and assess all motor vehicles in his county subject to taxation as of January 1st in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at twelve o'clock M. of the first day of January in each year.

Construction.

Nothing herein contained shall relieve the applicant for registration or reregistration of any motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or reregistration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid."

Approved March 11, 1963.

CHAPTER 246

An Act to Enable Boards of County Commissioners to Designate Zoning Districts In Certain Areas Lying Outside the Corporate Limits of Cities and Towns, and to Adopt Zoning Regulations for These Zoning Districts, and To Create Zoning Commissions and Zoning Boards of Adjustment for These Districts, and Repealing Sections 11-2710, 11-3852, and 11-3854, R. C. M. 1947, and All Acts and Parts of Acts In Conflict Herewith.

Whereas, continuing growth and economic development of many cities and towns of this state create urbanized use of lands adjoining and surrounding these cities and towns but beyond their incorporated limits, and

Whereas, orderly patterns of use for such lands preserve and increase their value as residential, industrial, agricultural, commercial, recreational or other lands as may be appropriate to their situation, and

Whereas, establishment of reasonable patterns of land

use and development is more appropriately determined by local consultation and decision than by enactment of the state legislative assembly, and

Whereas, the boards of county commissioners are constituted agencies for local administrative decision within policy limits which are determined by the legislative assembly, and

Whereas, it is the intention of the legislative assembly that the boards of county commissioners shall exercise the police power of the state for the purpose of establishing and administering zoning districts for certain unincorporated suburban lands of the state within the provisions and limitations of this act.

Be it enacted by the Legislative Assembly of the State of Montana:

Authority given county commissioners to adopt zoning regulations.

Section 1. For the purpose of promoting the health, safety, morals and general welfare of the people in cities and towns and counties whose governing bodies have adopted a comprehensive development plan for jurisdictional areas pursuant to title 11, chapter 38, R. C. M. 1947, the board of county commissioners in such counties are authorized to adopt zoning regulations for all or parts of such jurisdictional areas in accordance with the provisions of this act.

City-county planning board shall act as zoning commission.

Section 2. The board of county commissioners shall require the city-county planning board to act as a zoning commission to recommend boundaries and appropriate regulations for the various zoning districts. The city-county planning board shall make a written report of its recommendations to the board of county commissioners, but such recommendations shall be advisory only.

Unincorporated portions—zoning by resolution.

Section 3. (1) Within the unincorporated portions of a jurisdictional area which has been established under provisions of section 11-3825, R. C. M. 1947, and which portions are contiguous to a city, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or parts of the jurisdictional area.

Certain business uses.

(2) Within some such zoning districts it shall be lawful and within others it shall be unlawful to erect, construct, alter or maintain certain buildings, or to carry on certain trades, industries or callings.

Limited specifications.

(3) Within each district the height and bulk of future buildings and the area of the yards, courts and other open spaces and the future uses of the land or buildings shall be limited and future building setback lines shall be established.

Uniformity.

(4) All such regulations shall be uniform for each class or kind of buildings throughout a district, but the regulations in one (1) district may differ from those in other districts.

Zoning regulations shall be made with comprehensive development plan.

Section 4. The zoning regulations shall be made in accordance with a comprehensive development plan, and shall be designed to lesson congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such zoning regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such jurisdictional area, and the zoning regulations shall, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area.

Board shall follow procedure.

Section 5. The board of county commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning districts and in the adoption or amendment of zoning regulations:

Notice of public hearing.

(1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning district shall be published once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

(a) the boundaries of the proposed district

(b) the general character of the proposed zoning regulations

(c) the time and place of the public hearing

(d) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder.

Hearing.

(2) At the public hearing the board shall give the public an opportunity to be heard regarding the proposed zoning district and regulations.

Review.

(3) After the public hearing the board shall review the proposals of the planning board and shall make such revisions or amendments as it may deem proper.

Resolution of intention.

(4) The board may pass a resolution of intention to create a zoning district and to adopt zoning regulations for the district.

Publication of resolution.

(5) The board shall publish notice of passage of the resolution of intention once a week for two (2) weeks in a newspaper of general circulation within the county. The notice shall state:

(a) the boundaries of the proposed district

(b) the general character of the proposed zoning regulations

(c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk and recorder

Written protest.

(d) that for thirty (30) days after first publication of this notice the board will receive written protests to the creation of the zoning district or to the zoning regulations from persons owning real property within the district whose names appear on the last completed assessment roll of the county.

If no protest in 30 days, board may adopt.

(6) Within thirty (30) days after the expiration of the protest period the board may in its discretion adopt the resolution creating the zoning district and/or establishing the zoning regulations for the district; but if *forty (40) percent of the freeholders* within such district whose names appear on the last completed assessment roll shall have protested the establishment of the district or adoption of the regulations, the board shall not adopt the resolution and no further zoning resolution shall be proposed for the district for a period of one (1) year.

Protest of 40% of freeholders defeats resolution.

One-year limitation.

Board of adjustment.

Section 6. The board of county commissioners shall provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this act shall provide that the board of adjustment may, in appropriate cases, and subject to appropriate conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its general purposes and intent and in accordance with the general or specific rules of this act.

Appointment—term.

(1) The board of adjustment shall consist of five (5) members, each to be appointed for a term of two (2) years, and removable for cause by the board of county commissioners upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. The board of county commissioners may designate the same persons to act as members of the board of adjustment for unincorporated portions of the jurisdictional area as may be appointed by the municipality within the jurisdictional area under provisions of section 11-2707, R. C. M. 1947.

Duties of board of adjustment.

(2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution adopted pursuant to this act. Meetings of the board of adjustment shall be held at the call of the chairman and at such times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Appeals.

(3) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the county affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of

appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed was taken.

Stay of proceedings.

(4) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

Hearing of appeal.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by his attorney.

Powers of board.

(5) The board of adjustment shall have the following powers:

Appeals.

To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this act or of any resolution adopted pursuant thereto.

Special exceptions.

To hear and decide special exceptions to the terms of the zoning resolution upon which said board is required to pass under such resolution.

Variance.

To authorize upon appeal in specific cases such variance from the terms of the resolution as will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done.

Determination.

(6) In exercising the above mentioned powers, the board of adjustment may, in conformity with the provisions of this act, reverse or affirm, wholly or partly,

or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

Required concurring vote.

(7) The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such resolution, or to effect any variation in such resolution.

Appeal to court of record within 30 days.

(8) Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the office of the board.

Writ of certiorari.

(9) Upon presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, upon application, on notice to the board and on due cause shown, grant a restraining order.

Return.

(10) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

Testimony.

(11) If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of

the matter, the court may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs.

(12) Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

Violation—penalties.

Section 7. A violation of this act or any resolution adopted pursuant thereto is hereby declared to be a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars ($500) or imprisonment in the county jail not exceeding six (6) months, or both.

Injunction.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this act, or of any resolution made under authority conferred hereby, the proper authorities of the county, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of such building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises.

Enforcing officers—permits—fees.

Section 8. The board of county commissioners may appoint enforcing officers to supervise and enforce the provisions of the zoning resolutions, and may provide for the issuance of location or conformance permits and may collect a fee for each such permit, and the proceeds of such fees shall be deposited in the general fund of the county.

Existing use.

Section 9. Any lawful use which is made of land or buildings at the time any zoning resolution is adopted by the board of county commissioners may be continued, although such use does not conform to the provisions of such resolution.

Excepted uses.

Section 10. No resolution, rule or regulation adopted pursuant to the provisions of this act shall prevent the complete use, development or recovery of any mineral, forest, or agricultural resources by the owner thereof.

Severability.

Section 11. The provisions of this act shall be severable and, if any of its sections, provisions, exceptions, clauses or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect.

Repealing clause.

Section 12. Sections 11-2710, 11-3852 and 11-3854, R. C. M. 1947, and all acts and parts of acts in conflict herewith are hereby repealed.

Approved March 11, 1963.

CHAPTER 247

An Act to Clarify the Advisory Functions and Jurisdiction of City Planning Boards and City-County Planning Boards Under Provisions of Title 11, Chapter 38, R. C. M. 1947, by Amending Sections 11-3801, 11-3803, 11-3808, 11-3810, 11-3813, 11-3818, 11-3820, 11-3824, 11-3825, 11-3828, 11-3830, 11-3831, 11-3833, 11-3834, 11-3840, 11-3842, 11-3843, 11-3844, 11-3845, 11-3846, 11-3847, 11-3848, 11-3851, and 11-3855, R. C. M. 1947; by Adopting a Saving Clause; and by Repealing Sections 11-3832, 11-3835, 11-3836, 11-3837, 11-3838, 11-3839, 11-3852, 11-3854, 11-3856, 11-3857 and 11-3858, R. C. M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 11-3801, R. C. M. 1947, is amended to read as follows:

City governing body may create planning board—purposes.

"11-3801. **City planning boards or city-county planning boards authorized—purpose of act.** The governing body of any city or the governing bodies of any two or more cities and the county in which such city or cities are located jointly may create a planning board in order to promote the orderly development of its governmental units and its environs. It is the object of this legislation to encourage local units of government to improve the present health, safety, convenience, and welfare of their

citizens and to plan for the future development of their communities to the end that highway systems be carefully planned, that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; and that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds.

Advisory capacity.

In accomplishing this objective, it is the intent of this legislation that the planning board shall serve in an advisory capacity to presently established boards and officials."

Amending clause.

Section 2. Section 11-3803, R. C. M. 1947, is amended to read as follows:

Definitions.

"11-3803. **Definitions.** As used in this act:

"City."

1. 'City' includes incorporated cities and towns.

"City council."

2. 'City council' means the chief legislative body of a city or incorporated town.

"Planning board."

3. 'Planning board' means a city planning board or a joint city-county planning board.

"Master plan."

4. 'Master plan' means a *comprehensive development* plan or any of its parts such as *a* plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and other related matters. *The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body.*

"Public place."

5. 'Public place' means any tract owned by the state or its subdivisions.

"Mayor."

6. 'Mayor' means mayor of a city.

"Streets."

7. 'Streets' includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

"Units of government."

8. 'Units of government' means any federal, state, regional, county, city or town.

"Utility."

9. 'Utility' means any facility used in rendering service which the public has a right to demand.